

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.1050/1997

Dated: 17-7-2000

Suryakant Sitaram Dixit

Applicant.

Shri M.S.Ramamurthy

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. V.S.Masurkar.

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri A.V.Haridasan, Vice-Chairman,
Hon'ble Shri Govindan S. Tampi, Member (A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library?

Govindan S. Tampi
(GOVINDAN S. TAMPI)
MEMBER (A)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.
ORIGINAL APPLICATION NO.1050/97

Pronounced this the 17th day of July 2000.

Coram: Hon'ble Shri A.V.Haridasan, Vice-Chairman,
Hon'ble Shri Govindan S.Tampi, Member(A).

Suryakant Sitaram Dixit,
Flat No.14-A,
Kudale Patil Vihar,
Sinhagad Road,
Anandnagar,
Pune - 411 051.

(By Advocate Shri M.S.Ramamurthy)

Vs.

1. The Union of India,
through The Secretary,
Government of India,
Ministry of Environment & Forests,
Lodi Road,
New Delhi.
2. The State of Maharashtra,
through the Chief Secretary,
Government of Maharashtra,
Mantralaya,
Mumbai - 400 032.
3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi - 110 011.
4. Shri K.R.Khadse,
Deputy Conservator of Forests,
Wadsa Forest Division Wadsa,
At P.O. : Wadsa,
Dist: Gadchiroli,
Maharashtra State.
5. Shri P.R.Yeole,
Deputy Conservator of Forests,
Working Plan Division Dahanu,
At P.O. : Dahanu, Dist: Thane,
Maharashtra.
6. Shri S.P.Thakre,
Deputy Conservator of Forests,
Working Plan Division Amraoti,
At P.O.: Amraoti,
Dist : Amraoti (M.S.).
7. Shri M.N.Gawli,
Director Forest Training School,
Jalana, At P.O. : Jalna,
Maharashtra State.

(By Advocate Mr.V.S.Masurkar)

... Applicant.

... Respondents.

: O R D E R :

{Per Shri Govindan S.Tampi, Member (A)}

Original Application No.1015/97 has been filed by Shri

... 2.

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S.S.Dixit who is an Officer belonging to the Forest Department in Maharashtra State. He is contesting his non-inclusion in the panel for promotion to the Indian Forest Service,(for short, IFS) in the selections of 1994-95, 1995-96 and 1996-97, as well as, inclusion of a few persons who were junior to him for promotion to IFS.

2. Applicant, who originally joined the State Forest Department as a Range Forest Officer on 3.11.1962, through an open state level competitive examination became an Assistant Conservator of Forests (for short, ACF) on 31.7.1977 and was promoted to the grade of Divisional Forest Officer on 2.4.1991. He is placed at Sl.No.23 in the seniority list of ACF published by the Respondent No.2 with Respondents No.4, 5, 6 and 7 being placed at Sl.Nos.40, 24, 26 and 25 respectively. Though, his name was shown in the seniority list of ACF and he was in the zone of consideration for being promoted to IFS cadre during 1994-1995, 1995-96 and 1996-97, he was not selected and his junior Shri A.R.Khadse R-4 was promoted to I.F.S. on 2.1.1995. Similarly, Respondents 5 to 7 who were also his juniors were also selected and inducted to IFS w.e.f. 19.3.1997. His representations against the non-selection to I.F.S. were rejected by the State Government. He specifically mentions the case of R-7 Shri M.N.Gawli, his junior who was placed on the panel conditionally that he will be selected on the expunction of adverse entries entered against him which was done subsequently. He also claims that the DOPT's letter dt. 10.4.1989 had laid down bench mark for different posts and that the bench mark for appointment by promotion to IFS was 'good'. It should have been communicated to the appellant as any lower grading will have to be treated as adverse entry

in the matter of promotion. As no adverse entry had been communicated to him, he presumed that he had obtained the prescribed bench mark and therefore, was surprised to find that he has not been included in the list, says the applicant.

3. The respondents reply is that the selection in the instant case has been done strictly in accordance with the instructions of the Government of India, duly communicated to all persons concerned i.e. I.F.S. (Appointment by Promotion) Regulation, 1966 and that the allegation made by the applicant that he was in any way discriminated, was factually incorrect and fallacious.

4. We have heard both the counsels. Shri Ramamurthy appearing for the applicant has contended that since the applicant actually worked as senior officer i.e. as Divisional Forest Officer (for short, DFO) from 2.4.1991 he should have been considered for promotion ahead of the other persons who were also under him in the zone of consideration, who were only Assistant Conservators. He sought to rely upon the decision of the Full Bench of this Tribunal at Hyderabad, in the case of S.S.Sambhus Vs. Union of India & Ors. ((1992) 19 ATC 571 (FB)), in which one of us was a party (Hon'ble Shri A.V.Haridasan, Vice-Chairman). In paragraphs 8 and 9 of the order it has been held that when Officers of two categories were being considered together for selection to a higher post, a weightage has to be given for the gradation of the senior officers. For example, 'good' in this case has to be read as 'very good'. This apparently has not been done in the case of the applicant, which was led to his non-inclusion, in the select panel, he contended. Shri Ramamurthy also placed reliance on a decision of the Mumbai Bench of the Tribunal in the case of Ravendra Mohan Dayal Vs. State of Maharashtra & Ors. (O.A.

No.468/99), wherein it has been held that any Confidential Report with gradings which is below the bench mark should have been communicated. He, further argued that the reply filed by the UPSC before the Respondents have been only with the intention of by-passing the decision of the Tribunal in Shambhus case, referred to above. He also said that as the Regulation in clause 5 refers to the preparation of a list of the members of the State Forest Service, suitable for promotion to the service, the view of the respondents that the selection was governed by rules and conventions was incorrect and in this way the applicant was unjustifiably denied promotions which should be granted to him.

5. Replying for all the respondents, Shri Masurkar brought it out that Regulation 5(4) of the IFS (Appointment by Promotion) Regulation makes it clear that the required number of persons in the select panel shall be taken from those obtaining 'outstanding' 'very good' and 'good' in that order with interse seniority being maintained amongst those with same gradation. That is what has been done in all these cases. He also referred to the meetings of the Selection Committee held on 30.3.1995, 31.3.1996 and 31.3.1997. In all the three cases the applicant was actually considered by the Selection Committee as he came within the consideration zone number of three i.e. thrice the number of vacancies, but was not placed on the select list as he was graded only as 'good' and there were adequate number of candidates available with the higher gradation. He, further contended that the applicant only had a right for being considered and it was ~~the~~ ^{his} equally prerogative of the Selection Committee to select or not select any particular individual on the basis of performance as brought out by the Annual

Confidential Reports and in accordance with the Rules. He specifically mentioned that the case of R-7 Shri Gawli and contended that his placement in the panel on the condition that he will be promoted on the expunction of the adverse entry was proper and that he was promoted with effect from 8.7.1987, but against the vacancy of 1995-96. The respondents states that they have acted correctly and no relief to the applicant should be forthcoming. They also placed before us the proceedings of the Selection Committee for the relevant years.

6. We have carefully considered the matter. We have also perused the proceedings of the Selection Committee held on 30.3.1995, 31.3.1996 and 31.3.1996. Sri Ramamurthy, learned counsel of the applicant at the outset stated that the applicant does not want to press his claim for the year 1994-95 and therefore not challenging the appointment of the 4th respondent to IFS now. The short point that calls for determination is whether the applicant has been wrongly denied inclusion into the Select List of IFS. The IFS is an all India Service quite different from the State Forest Service with higher responsibilities and likely placement on all India basis. Therefore, the selection to the service would have to be based on the acknowledged relative merits of the candidates, out of whom only those found suitable can be selected. Criterion for the above is clearly laid down by the I.F.S. (Appointment by Promotion) Regulation, 1966. After enumerating the procedure for the constitution of the Selection Committee, the criterion for selection is detailed in Regulation 5(4) which reads as below :

"The list shall be prepared by including the required number of names first from amongst the Officers finally classified as 'outstanding', then from amongst those similarly classified as 'very good' and thereafter amongst those similarly classified as 'good' and the order of names interse

within them in the order of seniority in the State Forest Service".

The crucial expression is "required number of names". It would mean that the required number of persons will have to be empanelled depending upon the gradation obtained by them. If adequate number of people are available in the first category 'outstanding', one does not have to go to the second category 'very good'. Similarly, if the required number becomes available from the second category, the select panel gets exhausted and the Committee does not have to select anyone from the third category 'good'. On perusal of the minutes of the Selection Committee's deliberations held on 30.3.1995, 31.3.1996 and 31.3.1997, we are convinced that this is what exactly has happened. While in the selection of 30.3.1995 the application was beyond the consideration zone, he was definitely considered by the Selection Committees held on 31.3.1996 and 31.3.1997, but did not make the grade as adequate number of persons were available in the category 'very good' itself and there was no need to reach down to those who were rated as 'good' like the applicant. The procedure has been correctly done and the same cannot be faulted.

7. We have perused the two decisions of the Tribunal cited by the applicant and hold that they do not come to his aid. In Sambhu's case, the case concerned individuals belonging to Class-III posts of Assistant Surveyor and permitted to cross efficiency bar competing for the Class - I post. Tribunal thereafter correctly decided that those working in the higher posts deserved a weightage in grading. In this case, on the other hand, the applicant and the respondents four to seven (4 to 7) are substantive Assistant Conservators and the post to which selection is sought one of higher responsibility and all India

placement prospects. The question of granting any weightage would not arise in this case. In Shambhus case the Full Bench of the Tribunal was considering the applicability of O.M. dt.10.3.1989 of the Department of Personnel in a case where quality of performance in posts of Class - III and Class - I were to be assessed and evaluates for the purpose of promotion. The Full Bench taking note of the peculiar facts and circumstances of the case to meet the ends of justice in that case suggested upgrading of ACR for the service rendered in the Higher Post. That cannot be followed as a precedent in the instant case. Selection for inclusion in the list or appointment to the Indian Forest Service is to be made strictly in accordance with the scheme of the IFS (Appointment & Promotion) Regulation, which does not provide for any weightage to be given to service rendered in a higher category of State Forest Service. Reference to the decision of this Bench in Ravendra Mohan Dayal's case is also beside the point, as it relates to a case where bench mark was fixed for promotion unlike in this case where no bench mark has been fixed, but regulations which were communicated to all had laid down a criterion strictly according to which the selection has been made. Applicant could have had some legitimate case only if the selection process laid down in the regulation has been deviated from. That not having taken place, the selection remains unavailable.

8. Applicant's plea that conditional inclusion in the select panel of Sh. Gawli, respondent No.7, subject to the expunction of the adverse remarks was wrong also does not hold water as unconfirmed adverse entry is no adverse remark at all. Selection Committee was fully justified in hearing it as well.

9. Applicant's counsel also ~~shared~~ considerably on the expression 'suitable' appearing in Clause 5 (1) of the Regulation. The Regulations have laid down the procedure for selecting the suitable officers for the higher service (IFS) and the requirement therein has been duly fulfilled by the selection process adopted. And the persons selected are in our opinion, found suitable for the purpose. The applicant has failed to make the grade.

10. In the ~~result~~, application fails and is thus rejected. Both parties to bear their own costs.

GOVINDAN S.TAMPI)
MEMBER(A)

B.

(A.V.HARIDASAN)

VICE-CHAIRMAN